



IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1975

No. **75-1835**

ALEJANDRO LAMOUR-NADAL

Petitioner

vs.

PUERTO RICO TOURIST DEVELOPMENT COMPANY

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FOR THE FIRST CIRCUIT

ALEJANDRO LAMOUR-NADAL
G.P.O. Box 1543
San Juan, Puerto Rico 00936

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1975

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No.
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ALEJANDRO LAMOUR - NADAL
Petitioner

vs.

PUERTO RICO TOURIST DEVELOPMENT COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE FIRST CIRCUIT:

The petitioner, ALEJANDRO LAMOUR-NA-
DAL, on his own right, prays that a :
writ of certiorari be issued to review
the Order of the Court of Appeals for
the First Circuit rendered in these
proceedings on February 19, 1976.

OPINIONS BELOW

The Order of the Court of Appeals, as
Appendix A, infra, p. . The opinion
of the United States District Court for
the District of Puerto Rico, is repor-
ted at 399 F. Supp. 1222, 1975.

JURISDICTION

The order of the Court of Appeals was entered on February 19, 1976. And received by petitioner on March 22, 1976. The Court of Appeals erroneously mailed the copy of the order to petitioner's previous legal representative.

Petitioner was out of San Juan, Puerto Rico for a period of approximately four weeks, returning on the night of Friday, March 19, 1976. On Monday, March 22, 1976 a telephone call was received from the office of petitioner's previous legal representative indicating that an order from the Court of Appeals had been received there. (See Exhibit 24)

Petitioner's wife had been instructed to go to petitioner's Post Office Box daily and if any notification from the Court of Appeals arrived, to telephone petitioner. None ever arrived.

In view of the aforestated, Petitioner feels that the allotted 90 days to file a petition for certiorari commenced on March 22, 1976. And thus, this petition is being filed within the prescribed period of time. The jurisdiction of this Court is invoked under 28 USC Section 1651 (a).

QUESTIONS PRESENTED

Petitioner was summarily dismissed from his employment with the Puerto Rico

Tourist Development Company without being given a hearing as established in the personnel regulations. Suit was brought in the United States District Court for the District of Puerto Rico by Petitioner against the Puerto Rico Tourist Development Company. On January 2, 1975 Respondent contended (ninety (90) days later) that it was not a person within the meaning of 42 U.S.C. Section 1983. The District Court so held and dismissed the suit for lack of jurisdiction. And the Court of Appeals summarily dismissed for lack of appellate jurisdiction based solely on the record and without giving petitioner the opportunity to be heard, to have his day in court as guaranteed in the Constitution of the United States. The question thereby arising is:

1. Is the Puerto Rico Tourist Development Company a person within the meaning of 42 U.S.C. Section 1983?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment V:

"No person shall.....nor be deprived of life, liberty or property, without due process of law."

STATUTE INVOLVED

"Civil Rights Act, 42 U.S.C. Section 1983: Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF FACTS

On October 30, 1972, Petitioner was verbally dismissed from his job. Dismissal was contrary to Personnel Regulations in effect which made mandatory five steps for dismissal. The last step is a hearing, which was never granted to Petitioner.

Respondent contended that it was not a person within the meaning of title 42 U.S.C. Section 1983. And the Honorable United States District Court for the District of Puerto Rico so held in September 16, 1975 and in so doing, erred. (Please see Exhibit No. 16)

A Motion of Plaintiff for Reconsideration was denied on December 15, 1975.

Petitioner, on his own right, in time, on January 14, 1976, appealed to the Honorable Court of Appeals for the First Circuit. The Honorable Court of Appeals for the First Circuit from the record

solely dismissed the appeal for lack of appellate jurisdiction.

REASONS FOR GRANTING THE WRIT

1. The decision below directly conflicts with the decision rendered by the Honorable United States District Court for the District of Puerto Rico in Marín vs. University of Puerto Rico, 377 F. Supp. 613 (1974).

In Marín vs. University of Puerto Rico, supra, the Honorable District Court for the District of Puerto Rico held, "....the University of Puerto Rico does not fall within the doctrine set out in Monroe, supra, and reasserted in Moor, supra, since it is not a municipality, a municipal corporation or a political subdivision of the Commonwealth of Puerto Rico." (Emphasis supplied)

2. The Puerto Rico Tourist Development Company was created by Law Number 10 of June 18th., 1970, with "existence and legal personality independent from the Commonwealth of Puerto Rico or any of its dependencies" (23 LPRA Section 671 (a), Emphasis supplied).

In 23 LPRA Section 671 (K) of the Puerto Rico Tourist Development Company enabling statute, responsibilities for debts, it was established "the debts and other obligations of the Company shall not constitute debts or obligations of the Commonwealth of Puerto Rico nor of any of its municipalities

or other political subdivisions, and the latter shall not be liable with respect to them, it being understood that said debts and obligations shall not be payable from funds other than those of the Company. (Emphasis supplied)

3. If the University of Puerto Rico, Marín v. University of Puerto Rico, supra, "does not fall within the doctrine set out in Monroe, supra," then the Puerto Rico Tourist Development Company does not fall within the Monroe v Pape, 365 U.S. 167, 187-191, doctrine either.

4. The decision below raises substantial Constitutional questions such as:

- a) Do Puerto Ricans have any rights under the Constitution of the United States of America?
- b) Does the Due Process Clause applies to Puerto Ricans?

5. Are Puerto Ricans protected to the same extent as mainland citizens by laws passed by the United States Congress?

6. If Puerto Ricans have the same rights as mainland citizens under the Constitution of the United States and if they are protected to the same extent as mainland citizens by the laws passed by the Congress of the United States, then Petitioner contends that he has been denied his day in court as

as guaranteed by the Constitution of
the United States of America.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the order of the Honorable Court of Appeals for the First Circuit.

DATED at San Juan, Puerto Rico this
18th. day of June 1976.

Respectfully submitted,

ALEJANDRO LAMOUR-NADAL
On his own right
G.P.O. Box 1543
San Juan, P. R. 00936

CERTIFICATE ON SERVICE

On this same date I have mailed two copies of this Petition by Certified Mail, number 041371, and return Receipt Requested, postage pre-paid, to José A. Acosta Grubb, Esq., P.O. Box 192, San Juan, P. R. 00902.

Dated at San Juan, Puerto Rico, this
18th. day of June 1976.

ALEJANDRO LAMOUR-NADAL
On his own right
G.P.O. Box 1543
San Juan, P. R. 00936

A P P E N D I X

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ALEJANDRO LAMOUR NADAL, '

Plaintiff '

vs. 'CIVIL NO. 75-1

PUERTO RICO TOURIST
DEVELOPMENT COMPANY, '

Defendant '

-----'

OPINION AND ORDER

On January 1, 1975, plaintiff filed the instant complaint seeking damages and injunctive relief to redress the alleged violation of rights secured to him by the Constitution of the United States. Invoking jurisdiction of the Court under Title 28, United States Code, Section 1343, Title 42, United States Code, Section 1983 and Title 23, Laws of Puerto Rico Annotated, Section 671(d), plaintiff claims that his termination as an employee of defendant without a statement of reasons or a hearing deprived him, under color of state law, of federally protected constitutional rights, particularly his rights to due process of law, and seeks reinstatement to his position with defendant \$285,000 in damages and attorney's fees and any such further relief that may be just and proper.

Civil No. 75-1

After having obtained an extension of time to file a responsive pleading, defendant on April 30, 1975, filed a motion to dismiss on the grounds, first, that the doctrine of *res judicata* bars plaintiff's action because plaintiff already sued defendant in the Superior Court of Puerto Rico, San Juan Section, for reinstatement to his position with defendant and said action was dismissed with prejudice on March 27, 1974 and, second, that the Court lacks jurisdiction to entertain the instant complaint because defendant is not a "person" for purposes of Title 42, United States Code, Section 1983.

Of necessity, we must first address the question of jurisdiction since a determination of whether or not the doctrine of *res judicata* applies in this case constitutes a judgment on the merits that can be made only after the Court assumes jurisdiction. Bell v. Hood 327 U.S. 678 (1945). For the reasons outlined below, we find that the Court does not have jurisdiction to entertain this action and therefore must grant defendant's motion to dismiss.

At the outset we must point out that jurisdiction is not, and can not be, conferred on this Court by Title 23, Laws of Puerto Rico Annotated, Section 671(d) or any other statute of the Commonwealth of Puerto Rico. Federal district courts have been created by Congress pursuant to Article II, Section 1 of the

Federal Constitution. They are courts of original but limited jurisdiction and are empowered to hear only such cases as are within the judicial power of the United States and have been entrusted to them through a jurisdictional grant of Congress. It is settled law that the judicial power of the United States having been defined by Article III, Section 2 of the Constitution, Federal courts can not be given authority beyond that which the Constitution has thereby conferred. Pursuant to its authority under Article III, Section 1, Congress can create inferior Federal courts and establish their jurisdiction, but it can not vest in them more judicial power than that which Article III, Section 2 grants to the Federal Government. Obviously, what Congress is powerless to do with respect to Federal courts can not be done by the Legislature of the Commonwealth of Puerto Rico.

Turning now to the main jurisdictional allegation, that the Civil Rights Act, Title 42, United States Code, Section 1983, and its jurisdictional counterpart, Title 28, United States Code, Section 1343, empower this Court to entertain the complaint, we find that the Puerto Rico Tourist Development Company is not a "person" within the meaning of the Civil Rights Act and thus is not amenable to suit under said statute.

In Monroe v. Pape, 365 U.S. 167 (1961) the Supreme Court, relying on the exten-

sive congressional debates prior to passage of the Civil Rights Act of 1971, in particular those related to the defeated proposal to make municipalities liable under the Act, held that a municipal corporation is not a "person" within the meaning of Title 42, United States Code, Section 1983. This ruling, as clearly shown by Moor v. County of Alameda, 411 U.S. 693 (1973) and City of Kenosha v. Bruno, 412 U.S. 507 (1973), has become settled law and the lower Federal courts have made it applicable as well to the states and their political subdivisions and agencies.

In Sires v. Cole, 320 F. 2d 877 (9 Cir. 1963), the doctrine of Monroe v. Pape, supra, was extended by the Court when it flatly stated that "Congress did not undertake to bring municipal corporations within the ambit of Title 42, United States Code, Section 1983... The considerations which have led to this conclusion...indicate that this is likewise true of a state or county." The rationale for this logical extension was fully articulated in Williford v. People of California, 352 F. 2d 474 (9 Cir. 1965) when the proposition was stated that "a municipal corporation is but a political subdivision of a state, and if the state's political subdivision are not "persons" under the statute, then neither is the state."

In accordance with this extension of the doctrine of Monroe v. Pape, supra,

it was held in Deane Hill County Club, Inc. v. City of Knoxville, et al, 370 F. 2d 321 (6 Cir. 1967) that the State of Tennessee was not liable as a "person" within the meaning of Title 42, United States Code, Section 1983, in U. S. ex rel Gittlemacker v. County of Philadelphia, 413 F. 2d 84 (3 Circ. 1969) that the Commonwealth of Pennsylvania is not a "person" within the meaning of this Section and in Meyer v. New Jersey, 460 F. 2d 1252 (3 Cir. 1972) that the State of New Jersey could not be sued under the Civil Rights Act.

The extension of the doctrine from municipal corporations to the states had as a logical corollary the extension of the doctrine to other subdivisions of the states. Thus, in Bennet v. People of the State of California, 406 F. 2d 36 (9 Cir. 1969), it was held that "state agencies... which are but arms of the state government are not "persons" within the meaning of the Civil Rights Act"; in Rosado v. Wyman, 414 F. 2d 170 (2 Cir. 1969), reversed on other grounds 397 (1970), that the Department of Social Services for the State of New York was not a "person" within the meaning of the Act and in Olson v. California Adult Authority, 423 F. 2d 1327 (9 Cir. 1970), cert. den 398 U.S. 914 (1970), that the California Adult Authority was not a "person" within the meaning of said Act.

In short, the doctrine of Monroe v. Pape, supra, has been expressly held

applicable not only to the states but also to many of their political subdivisions including counties, towns, townships, school districts, boards of education, housing authorities, police departments, municipally owned hospitals and state colleges.*

There is thus no question that by now, as stated in Cheramie v. Tucker, 493 F. 2d 586 (5 Cir. 1974), "It is well established that states and their political subdivisions are not persons within the meaning of Title 42, U.S.C., Section 1983."**

The Puerto Rico Tourist Development Company has been created as a "public corporation and instrumentality of the Government of the Commonwealth of Puerto Rico" by virtue of Title 23, L.P.R.A.,

* See also in this respect Harvey v. Sadler, 331 F. 2d 387 (9 Cir. 1964); Garrison v. County of Bernalillo, 338 F. 2d 1003 (10 Cir. 1964); Clark v. Washington, 366 F. 2d 678 (9 Cir. 1966) Davis v. United States, 439 F. 2d 1118 (8 Cir. 1971).

**Some courts have also held that liability is personal under the Act and can only be incurred in by individuals not by juridical persons. See for example Deane Hill Country Club, Inc. v. City of Knoxville et al, supra; Taylor v. Pennsylvania Board of Parole, 263

Civil No. 75-1

Section 671(a). As such, as this Court recently decided in its Order of August 1, 1975 in Hector Alfaro Flores v. Puerto Rico Tourist Development Company, Civil Number 75-499, it is clearly not a "person" within the meaning of the Civil Rights Act and can not be sued under its provisions. The Court therefore lacks jurisdiction to entertain this action and must dismiss the complaint. The Clerk of the Court is hereby directed to enter judgment in accordance with Rule 58 of the Federal Rules of Civil Procedure, dismissing the complaint and taxing costs to the plaintiff.

IT IS SO ORDERED.

San Juan, Puerto Rico, September 12, 1975.

JOSE V. TOLEDO
Chief U.S. District
Judge

Cont. **

F. Supp. 450 (MD Pa. 1967); Williams v. Craven, 273 F. Supp. 649 (CD Cal. 1967); Miller v. Swenson, 315 F. Supp. 773 (W D Mo. 1970).

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

ALEJANDRO LAMOUR NADAL, '

Plaintiff '

vs. ' Civil No. 75-1

PUERTO RICO TOURIST
DEVELOPMENT COMPANY, '

Defendant '

-----'

J U D G M E N T

The Court, Hon. José V. Toledo pre-
siding, having entered an Opinion and
Order in the above captioned case fin-
ding this Court lacks jurisdiction to
entertain this action, it is

ORDERED AND ADJUDGED that this
complaint be and hereby is dismissed
for lack of jurisdiction and it is

FURTHER ORDERED AND ADJUDGED that
plaintiff is to pay costs to the defen-
dant.

SO ORDERED.

San Juan, Puerto Rico, this 26th.
day of September 1975.

(S) Dennis A. Simonpietri

DENNIS A. SIMONPIETRI
Clerk
U.S. District Court

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF PUERTO RICO

ALEJANDRO LAMOUR NADAL,	,	
Plaintiff	,	
vs.	,	CIVIL NO. 75-1
PUERTO RICO TOURIST	,	
DEVELOPMENT COMPANY,	,	
Defendant	,	
-----	,	

O R D E R

Pursuant to our Opinion and Order of September 12, 1975, judgment was entered by the Clerk of the Court on September 26, 1975, dismissing this complaint for lack of jurisdiction and taxing costs on the plaintiff.

On October 28, 1975, plaintiff filed a motion for reconsideration on the grounds that the Court does have jurisdiction because the complaint included a prayer for equitable relief as well as demand for damages, and thus alleged a cause of action under the Civil Rights Act. Plaintiff further argues that the Court gave undue reliance to the decision in Alfaro Flores v. Puerto Rico Tourist Development Company, Civil No. 75-499, decided August 1, 1975 by the Hon. Juan R. Torruella, and that in light of Oppenheimer Méndez v. Acevedo, 388 F. Supp. 326 (DC PR 1974); Wolfe v. O'Neill, 336 F. Supp. 1255 (1972), and other ca-

ses cited in his motion, the Court does have jurisdiction. Plaintiff therefore prays that the Court grant the motion for reconsideration, deny defendant's motion for summary judgment and set the matter for trial on the merits.

It is apparent that plaintiff has not benefited from what the Court considered a clear and complete exposition of the reasons for finding that the Puerto Rico Tourist Development Company is not a "person" for purposes of Title 42, United States Code, Section 1983. This exposition was made precisely because the decision in Alfaro Flores v. Puerto Rico Tourist Development Company, supra, citing only two cases, did not go beyond flatly holding what is abundantly upon a review of the applicable jurisprudence.

Plaintiff's arguments lack merit. Defendant's lack of amenability to suit under Title 42, United States Code, Section 1983, does not depend on the type of relief sought by the plaintiff, nor on whether the Commonwealth Labor Relations Board considers defendant an "employer" within the meaning of the Commonwealth Labor Relations Act, nor on the judicial determination of which are the personnel rules applicable to those employees transferred to defendant from the Economic Development Administration by virtue of the law that created the defendant. Further, the cases cited by the plaintiff do not support a finding

Civil No. 75-1

that the defendant is a "person" for purposes of Title 42, United States Code, Section 1983.

In short, the Court finds that plaintiff has failed to bring forth grounds upon which the motion for reconsideration could be granted and the judgment vacated. In addition, plaintiff's motion for reconsideration was untimely filed as more than ten (10) days had already elapsed from the entry of the judgment.

In view of all of the above, plaintiff's motion for reconsideration is hereby denied.

IT IS SO ORDERED.

San Juan, Puerto Rico, December 11,
1975.

JOSE V. TOLEDO
Chief U.S. District
Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

File No. 75-1

ALEJANDRO LAMOUR-NADAL
Plaintiff

v.

NOTICE OF AP-
PEAL

PUERTO RICO TOURIST
DEVELOPMENT COMPANY

Notice is hereby given that Alejandro Lamour-Nadal, plaintiff above named, hereby appeals to the United States Court of Appeals for the First Circuit from the final judgment entered in this action on the 26th. day of September, 1975.

Dated at San Juan, Puerto Rico,
this 14th. day of January 1976.

ALEJANDRO LAMOUR-
NADAL

Plaintiff

G.P.O.Box G1543

San Juan, P. R. 00936

February 6, 1976

Dana H. Gallup, Esquire
Clerk, U.S. Court of Appeals
for the First Circuit
John W. McCormack
Post Office and Courthouse
Boston, Massachusetts 02109

RE: Civil No. 75-1
Alejandro Lamour Nadal vs.
Puerto Rico Tourist Development
Company

Dear Mr. Gallup:

I am enclosing record on appeal in
the above entitled case in connection
with the appeal taken by:

Plaintiff: Alejandro Lamour Nadal
From: Judgment filed and en-
tered Sept. 26, 1975

as per identifying certificate and in-
dex attached. An attested copy of the
docket entris is also enclosed.

Sincerely,

(S)Dennis A. Simonpietri

DENNIS A.SIMONPIETRI
Clerk of the Court

Enclosures
Cc. George L. Weasler

P.O. Box 9898 Santurce, P.R.00908
(Counsel for plaintiff-appellant)

José A. Acosta Grubb, Esq.
P. O. Box 192, Old San Juan 00902
(Counsel for defendant-appellee)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. Misc. 76-8014.

ALEJANDRO LAMOUR NADAL,
Plaintiff, Appellant

v.

PUERTO RICO TOURIST DEVELOPMENT COMPANY,
Defendant, Appellee.

ORDER OF COURT

Entered February 19, 1976

Upon a review of the record on appeal,

It is ordered that the appeal is hereby dismissed for lack of appellate jurisdiction.

By the Court:

(s) Dana H. Gallup
Clerk

(Cert. Copy, Clerk, U.S.D.C., P.R.;
cc: Messrs. Weasler and Acosta Grubb.)